

MEMORANDUM OF UNDERSTANDING
Between
THE ANTITRUST DIVISION
UNITED STATES DEPARTMENT OF JUSTICE
and
THE IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES DEPARTMENT OF JUSTICE

AND NOW, this 15th day of March 1996, the Antitrust Division of the United States Department of Justice ("Antitrust Division") and the Immigration and Naturalization Service ("INS"), hereby agree and understand that:

WHEREAS, the criminal enforcement of the antitrust laws is the core mission of the Antitrust Division;

WHEREAS, in today's globalized economy, many of the Antitrust Division's highest priority criminal prosecutions involve foreign firms and individuals;

WHEREAS, the Antitrust Division's ability to investigate and prosecute international cartel activity successfully requires the cooperation of aliens;

WHEREAS, the Antitrust Division generally cannot secure jurisdiction over aliens charged with antitrust offenses by extradition;

WHEREAS, the chief inducement for aliens charged with antitrust offenses to submit to U.S. jurisdiction is the ability to resume travel for business activities in the United States;

WHEREAS, in a small number of cases each year, the Antitrust Division may need to include as a term in a plea/cooperation agreement a cooperating alien's ability to travel to the United States;

WHEREAS, the INS considers criminal violations of the Sherman Antitrust Act, 15 U.S.C. § 1, to be crimes involving moral turpitude, which may subject an alien to exclusion or deportation from the United States;

WHEREAS, removal of criminal aliens is the highest of the INS enforcement priorities;

WHEREAS, the INS has discretion under certain circumstances to waive grounds of exclusion, to parole excludable aliens into the United States, and to

defer the deportation of deportable aliens;

WHEREAS, the use of an S nonimmigrant visa may be unfeasible in a given Antitrust case;

WHEREAS, the possibility of exclusion or deportation from the United States significantly impacts decisions by aliens about whether to submit to the jurisdiction of U.S. courts for purposes of entering pleas and providing assistance to the Antitrust Division in its investigations;

WHEREAS, prior consultation and written approval by INS is required before the Antitrust Division can represent that an alien's conviction under 15 U.S.C. § 1 will not result in the alien's exclusion or deportation from the United States;

WHEREAS, negotiations regarding plea/cooperation agreements frequently are very time-sensitive; and

WHEREAS, the Antitrust Division's consultation with INS on the possible issuance of a waiver during the Antitrust Division's plea/cooperation negotiations with aliens requires an expeditious and clearly-defined procedure;

THEREFORE, the Antitrust Division and INS desire to enter into the following Memorandum of Understanding ("MOU") to cooperate with each other in their respective enforcement obligations and to reconcile the administration of their respective duties within the United States Department of Justice.

1. Under this agreement, an alien is a "cooperating alien" if, in the determination of the Antitrust Division:
 - a. the alien is in possession of critical reliable information relevant to the Antitrust Division's investigation or prosecution of a significant antitrust matter;
 - b. the alien has cooperated, or is willing to cooperate with the Antitrust Division in its investigation or prosecution;
 - c. the alien's ability to travel to the United States after conviction will significantly enhance the Antitrust Division's ability to secure the alien's cooperation.
2. If the Antitrust Division determines that an alien qualifies as a

cooperating alien, the Assistant Attorney General for the Antitrust Division, or his/her designee, may petition the Commissioner of the INS, or his/her designee, to defer the alien's deportation, to waive the alien's inadmissibility or to grant parole, notwithstanding the alien's conviction for antitrust or related federal offenses. The petition made by the Antitrust Division shall:

- a. contain a summary of the investigation;
- b. represent that the cooperating alien has demonstrated a willingness to provide or has provided the Antitrust Division with significant assistance in its investigation or prosecution of a significant antitrust matter;
- c. represent that the cooperating alien has accepted responsibility for his/her criminal conduct;
- d. state that the cooperating alien has not been convicted of any felony in the United States other than the offense(s) that he/she has been or may be convicted of in connection with the subject antitrust matter;
- e. represent that the cooperating alien does not pose a continuing threat to United States commerce or to take part in future criminal conduct;
- f. briefly state the reason for not using the S nonimmigrant visa provisions for the cooperating alien's case; and
- g. specify the period during which the alien should be permitted to travel to or remain in the United States.

3. The petition made by the Antitrust Division also shall include a certification executed by the cooperating alien, in which he/she:

- a. acknowledges that any additional felony conviction in the United States may result in the cooperating alien's deportation and/or exclusion from the United States;
- b. executes a waiver to his/her right to a deportation hearing;
- c. if the matter is ongoing, agrees to cooperate fully with the United States;
- d. agrees to report to the Assistant Attorney General for the Antitrust Division should he/she be convicted of any felony while in the United

States; and

e. lists the alien's date and place of birth, alien registration number, and the date, place and manner of the alien's last entry into the United States. If the alien has no alien registration number, or has never entered the United States, the alien's certificate shall make this clear.

4. The INS shall determine within five (5) business days of its receipt of the Antitrust Division's petition on behalf of a cooperating alien whether to defer the alien's deportation, to grant a waiver of exclusion and admit the alien as a nonimmigrant, or to parole the alien into the United States. The INS will also determine within five (5) business days of its receipt of the Antitrust Division's petition when the deferral of deportation proceedings or the period of the alien's parole or admission shall expire, and whether the alien may seek a single parole or admission, or multiple paroles or admissions, during this period. The Commissioner of the INS, or his/her designee, shall provide written notification of this determination to the Assistant Attorney General of the Antitrust Division, or his/her designee within five (5) business days of the INS's receipt of the Antitrust Division's petition. In order to facilitate the INS's actions within the designated timeframe, the Antitrust Division shall notify the INS of the cooperating alien's identity and country of origin and the prospective terms of his/her plea agreement as early as practicable in the process but, in any case, before the alien executes the certification described in paragraph 3 of this MOU.

5. A grant of a deferral of deportation, a waiver of inadmissibility or a parole under this MOU shall be subject to the following conditions:

a. the cooperating alien acts consistent with his/her cooperation obligations;

b. the cooperating alien is not convicted of any felony in the United States other than the offense(s) that he/she has been or may be convicted of in connection with the subject antitrust matter;

c. the cooperating alien does not act in a manner which would warrant his/her exclusion from the United States; and

d. the Antitrust Division notifies INS of any information material to the immigration status of the cooperating witness, including, but not limited to, a breach of the alien's cooperation obligations or a conviction of any crime unrelated to the subject antitrust matter, whether against the laws of the United States, any of the several States, or a foreign country, in so far as the Antitrust Division has

knowledge of any such conviction.

Should the cooperating alien violate any of these conditions, the INS shall determine, in consultation with the Antitrust Division, whether to withdraw the cooperating alien's permission to travel to or remain in the United States.

6. If the INS determines that the alien is to be permitted access to the United States under a grant of parole, the INS shall provide the alien with a Form I-512 or a transportation letter. If the INS determines that the alien is to be granted a waiver of exclusion and admitted, but the alien lacks the necessary visa, the INS shall notify the consular officer to whom the alien will present a nonimmigrant visa application and recommend the issuance of a nonimmigrant visa to the alien.

7. If the INS declines a petition made by the Antitrust Division pursuant to this MOU, the Antitrust Division may appeal INS's decision to the Attorney General, through the Deputy Attorney General, and request that the Attorney General exercise his/her discretionary power to grant the waiver. The Antitrust Division shall submit a written notification of appeal to the Attorney General, through the Deputy Attorney General, and simultaneously shall deliver a copy of the notification to INS, after which the Antitrust Division and INS shall have five (5) business days to submit position papers on the issue for the Attorney General's consideration.

8. Not more than thirty (30) days before the expiration of the deferral of deportation or of the alien's period of admission or parole, the Assistant Attorney General of the Antitrust Division, or his/her designee, may petition the Commissioner of the INS, or his/her designee, to extend the period of the deferral of deportation proceedings, or of the alien's admission or parole, if the Antitrust Division determines that the alien still qualifies as a cooperating alien. A petition for extension shall include the information required in paragraphs 2 and 3 of this MOU. The INS will handle the petition in accordance with paragraphs 4, 5, 6, and 7 of this MOU.

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Antitrust Division

Doris M. Meissner
Commissioner
Immigration and
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